In the Supreme Court of the United States.

OCTOBER TERM, 1920.

JAMES J. RAFFERTY, AS COLLECTOR OF INTERNAL REVENUE FOR THE PHILIPPINE ISLANDS, *Petitioner*, *vs.* VISAYAN REFINING COMPANY *Respondent.*	No. 553.

Petition for Writ of Certiorari to the Supreme Court of the Philippine Islands.

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of James J. Rafferty, as Collector of Internal Revenue for the Philippine Islands, for a Writ of Certiorari to the Supreme Court of the Philippine Islands (accompanied by a certified copy of the transcript of the record as an exhibit hereto) for the review of a final judgment rendered against him herein by that court on March 18, 1920, for Pesos 11,861.71 and interest, respectfully shows:

I.

Brief statement of the facts and circumstances. By Section 1614 of Philippine Act No 2657, the Philippine Administrative Code of 1916, approved February 24, 1916, and effective from July 1, 1916, to October 1, 1917, it was provided that all merchants not specifically exempted should pay a tax of one per cent on the value of the merchandise sold, bartered, exchanged or consigned abroad by them. During the period from November 1, 1916 to December 31, 1916, the respondent, a merchant not so exempted, exported from the Philippine Islands to New York, N. Y., cocoanut oil extracted from Philippine copra and purchased by respondent in the markets of the Philippine Islands, of the value of Pesos 1,186,171, which was its property and remained such until sold to consumers within the United States, and, your petitioner claims, respondent thereby became liable under said section to taxes amounting to Pesos 11,-861.17. On January 9, 1917, respondent paid said taxes under protest to your petitioner to avoid distraint of its property which he had threatened in order to enforce payment. By Section 11 of the Act of Congress of August 29, 1916, the (Philippine) Autonomy Act, in force from its date and during that period, it was provided among other things,

> "That no export duties shall be levied or collected on exports from the Philippine Islands." (39 Stat. 545, 548.)

II.

The proceedings which have been had in this action. This action was begun by respondent in the Court of First Instance of the City of Manila, Philippine Islands, January 20, 1917 against your petitioner to recover the sum so paid. To the complaint an answer was interposed in behalf of your petitioner by the Acting Attorney General of the Philippine Islands, admitting the facts stated above but setting up that respondent's protest had been denied for the reason that the taxes mentioned were legal taxes. Upon those pleadings a decision (which was also a judgment) was rendered by that Court on November 26, 1917, in favor of the respondent and against your petitioner for the said amount paid. (The decision rendered was in this cause, and in the cause of Compania General de Tabacos de Filipinas against your petitioner—No. 13889 on the docket of that court—for a review in which your petitioner has filed a petition to this court—No. 548, October Term, 1920.) A motion in behalf of your petitioner for rehearing was denied on December 22, 1917. From that judgment your petitioner appealed to the Supreme Court of the Philippine Islands. On March 18, 1920, final judgment of that court was duly entered, affirming the judgment appealed from with the modification that respondent recover from your

petitioner besides the sum paid (Pesos 11,861.71), interest from the date of payment thereof (January 9, 1917), without costs.

On February 24, 1920, a motion for rehearing was made before that court in behalf of your petitioner. which was denied.

On March 16 (18?) 1920, notice was duly filed in behalf of your petitioner to the effect that he intended to petition this court for a writ of certiorari for the review of said judgment of the Supreme Court of the Philippine Islands, which is the highest court in which a decision of this action was or is possible, unless the cause be reviewed by this court.

On March 31, 1920, the Supreme Court of the Philippine Islands directed a stay of the execution of the said judgment for a period of six months.

III.

Grounds of the decisions below. The reason given by both of the Philippine courts for their decisions, was in substance that the collection of the taxes in question was prohibited by the section referred to above of the Autonomy Act.

By stipulation the cause was submitted to the Supreme Court of the Philippine Islands on the briefs in the cause of Compania General de Tabacos de Filipinas referred to above.

IV.

The subsequent Act of Congress legalizing collections made of taxes under the section in question of the Philippine Act of 1916.

The Act of Congress of June 5, 1920, the Deficiency Appropriation Act of 1920, provides that the taxes imposed by Section 1614 of Philippine Act No 2657, the section under which the taxes the judgment requires your petitioner to repay were collected,

> "* * * are legalized and ratified, and the collection of all such taxes made under or by authority of such Act of the Philippine Legislature is legalized, ratified, and confirmed as fully to all intents and purposes as if the same had by prior Act of Congress been specifically authorized and directed." (41 Stat, 1015, 1025.)

Since, as will be observed, that Act of Congress was not enacted until some months after the final judgment herein of the Supreme Court of the Philippine Islands had been duly perfected, and notice given of intention to apply to this court to review it, the obvious purpose of Congress in enacting it cannot be carried out in this case, unless a review be granted here.

V.

Effect in this cause of the ratification of 1920 by Congress. Had this cause been properly before the court of the Philippine Islands and not finally decided

at the time when Congress so legalized, ratified, and confirmed all collections of taxes made under the section under which the sum the judgment requires repaid was collected, then your petitioner respectfully submits, the Act of Congress of 1920 would clearly have been a valid and effective legalization of those collections and would not have rendered judgment herein against your petitioner.

That view accords with the decisions of the Supreme Court of the Philippine Islands in the cases of Smith, Bell & Company, Limited, and of Macleod & Company, Inc., against your petitioner's successor, about to be brought to the attention of this court, the former as No. 516 and the latter as No. 517, October Term, 1920, and with so much of the decision of that court in the cause of your petitioner against Smith, Bell & Company, Limited, about to be brought to the attention of this court as No. 544, October Term, 1920, as denied recovery, the taxes there in question having been paid in pursuance of the similar Philippine Act effective from October 1, 1917, and the reason for denial of recoveries being the ratification of those collections by similar Act of Congress of June 4, 1918 (40 Stat. 594, 597).

It also accords with so much of the decision of that court in the cause of your petitioner against Compania General de Tabacos de Filipinas mentioned above, as denied recovery for taxes paid in pursuance of

Section 2 of Act 2541 and Section 3 of Act 2622 of the Philippine Legislature, by reason of the ratification of those collections by a similar Act of Congress. (39 Stat. 262, 286).

Your petitioner also respectfully maintains that the Act of Congress of June 5, 1920 fully legalizes the collections of taxes in question in this action and calls for a reversal of the judgment herein, under the facts and circumstances of this cause.

VI.

Similar questions arise in several other pending cases which involve in the aggregate a very large sum. In the case of Compania General de Tabacos de Filipinas against your petitioner mentioned above, and in the case of Smith, Bell & Company, Limited, against your petitioner (No. 14466 in that court), that court affirmed judgments against your petitioner for Pesos 17,365.54 and Pesos 306,716.43 and interest, respectively (in the latter case also with costs), by reason of the collection of taxes from parties named in pursuance of said Section 1614 of the Philippine Administrative Code of 1916, making with the amount of the judgment herein a total of Pesos 356,943.68 ($167,971.84), exclusive of interest and costs, and your petitioner has filed applications to this court for writs of certiorari for the review of the judgments against him in the latter of those cases as

No. 548, October 1920 Term of this court, in the former as No. 544, October 1920 Term of this court.

Should your Honors reach the conclusion—contrary to the view of your petitioner—on the applications of Smith, Bell & Company, Limited, No 516 and Macleod & Company, Inc., No. 517, which are about to be presented as stated at V above, that the question there involved, the legality of collections under Section 1459 of the Philippine Administrative Code of 1917, calls for review of those cases by this court, then the amount indirectly involved in the decision of this and of your petitioner's two other applications referred to is much greater than Pesos 336,945.69. The question to be involved in the applications to be made by Smith, Bell & Company and Macleod & Company, is whether the Act of Congress of June 4, validated the collections of taxes it expressly purported to legalize as against claims on which suits were pending at the time of that enactment in which the Supreme Court of the Philippine Islands had not then rendered its decision, while in the cases of earlier origin in which your petitioner's applications are made, that court had acted before the Act of June 5, 1920, referring expressly to the Philippine law under which the taxes involved in them were collected. The Act of Congress of June 4, 1918, provided that taxes imposed under that section of the Administrative Code of 1917

> "* * * are hereby legalized and ratified, and the collection of all such taxes heretofore or hereafter is legalized, ratified, and confirmed * * * ." (40 Stat. 594, 597.)

Therefore, unless we may start in the latter cases with the proposition that the decisions below in the former were correct, as your petitioner insists, then *a fortiori* the latter cases of earlier origin which are here on your petitioner's applications involve the questions also involved in those of later origin, which were decided below in favor of his successor. Of those two cases (on the docket of this court), Case No. 516 was brought to recover Pesos 206,555.50 and Case No. 517, Pesos 97,018.65; and a large number of other cases for the recovery of taxes paid under section 1459 of the Administrative Code of 1917, are pending before the Philippine courts, involving already in the aggregate several million dollars, and that section is still in force.

VII.

The constitutionality and construction of Acts of Congress involved. One of the questions involved in this case is whether inasmuch as respondent had recovered final judgment for the refund of the taxes in question before the Act of Congress retrospectively legalizing their collection by express reference to the (Philippine) Act under which they had been collected, the enactment of that Act was within the power con-

ferred upon that body by the Constitution, especially in view of the fact that by the Philippine Autonomy Act Congress had previously prohibited any tax on exports from the Philippine Islands,—whether, in other words, respondent's judgment was such a vested interest as could not be disturbed by Congress. The views of your petitioner which he desires opportunity to urge before this court on review, are that no right to exemption from taxation on exports was conferred upon respondent by the Autonomy Act in such sense as to give him a vested interest in such exemption; that since the judgment therein had not yet been executed and its execution is still stayed, respondent can have no vested right in its enforcement superior to the right of Congress to legislate in the premises, at least for the insular possessions, to which, it has been settled, the Constitution as such does not apply as it does for the States and for the mainland of the United States proper; that in view of the special and peculiar relations of the Government of the Philippine Islands to the United States and of its courts to this court, the Act of Congress of June 5, 1920, is valid and effective as against respondent.

One question of construction directly involved is whether the Act of Congress of July 1, 1916, *supra* (before judgment herein), purporting to validate expressly collections under Section 2 of Act 2541 and Section 3 of Act 2622, should not be construed as

validating the Section of the Administrative Code of 1916 here in question, and the collection of taxes thereunder. The views of your petitioner are that that Act of Congress has that effect since in all respects here material the section in the Code of 1916 is substantially the same as the latter of the two sections of previous Philippine Acts referred to; and that the tax imposed by those sections is not a "tax on exports" within the meaning of Section 11 of the Autonomy Act as described briefly at I *supra*.

Another question of construction directly involved is whether the Act of Congress of June 5, 1920 (after judgment herein), purporting to validate expressly collections under Section 1614 of the Administrative Code of 1917 should not be construed as validating collections under the section of the Administrative Code of 1916 here in question. That is the proper construction according to the view of your petitioner, inasmuch as in all respects here material the section of the Code of 1916 is substantially the same as that of the Code of 1917.

VIII.

Interests of the United States and of a sovereignty directly subsidiary to it involved. The judgment of which a review is hereby sought was recovered for proceedings taken by your petitioner in pursuance of a law of the Government of the Philippine Islands, the most important of the insular

possessions which belong to and are under the protection of the United States.

It is your petitioner's view that in substance and effect this action is one against the Government of the Philippine Islands within the rule laid down by this court in *Lankford vs. Platte Iron Works Company, 235 U. S. 641* and other cases.

That, your petitioner insists, has an important bearing also in his favor upon the questions mentioned at VII *supra* and upon other questions involved.

IX.

The judgment is erroneous and unjust to your petitioner for the reasons which have been indicated above.

X.

Prayer. In view of the manifest importance to the jurisprudence of the United States and, through the principal of its territorial possessions, to the financial and moral interests of the nation, of certain of the questions involved as indicated above, the obvious novelty of some of them, the large amount involved, and the serious injustice to your petitioner of the judgment, your petitioner respectfully prays:

(a) That a writ of certiorari may be issued out of this court and under its seal, directed to the Supreme Court of the Philippine Islands, commanding that court to certify and send to this court, on a day certain to be therein designated, a full, true and com-

plete transcript of the record, and all the proceedings of that court in this cause, to the end that the judgment herein may be reviewed and determined by this court, in accordance with the statute in such case made and provided;

(b) That the judgment of the Supreme Court of the Philippine Islands and the whole thereof may be reversed by this court, and this cause remanded with the directions proper in the premises;

(c) That the stay of the execution of the judgment herein be continued pending the hearing and determination of this application, and if the application be granted, then also pending the final determination by the court on review;

(d) That your petitioner may have such other and further relief or remedy as to this court may seem just.

CHARLES MARVIN,
Attorney for Petitioner.

CERTIFICATE OF COUNSEL.

I hereby certify that I have carefully examined the foregoing petition, and, in my opinion, the same is well founded and the case is one in which the prayer of the petitioner should be granted by this court.

CHARLES MARVIN,
Attorney for Petitioner.

Washington, D. C.,
September 18, 1920.

NOTICE OF SUBMISSION, ETC.

To VISAYAN REFINING COMPANY,
Respondent.

You will please take notice that a petition, of which the foregoing is a copy, together with a copy of the record in this case in the Supreme Court of the Philippine Islands, (bearing No. 13887 on the docket of that court), duly certified by the clerk thereof, was filed with the Clerk of the Supreme Court of the United States, on September 18, 1920, and that the petition will be submitted on October 18, 1920, at the opening of the court on that day at 12 o'clock noon, or as soon thereafter as counsel can be heard.

CHARLES MARVIN,
Attorney for Petitioner.

Washington, D. C.
October 2, 1920.

ADMISSION OF SERVICE.

Due service of printed copies of the foregoing petition and of the record in the Supreme Court of the Philippine Islands, and of the above notice, on this day of October, 1920, is hereby admitted.

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Attorney for Visayan Refining Company, Respondent.